

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #5	CCRB Case #: 202001676	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2020 12:22 AM	Location of Incident: Nostrand Avenue and Eastern Parkway	Precinct: 77	18 Mo. SOL 8/15/2021	EO SOL 4/1/2022	
Date/Time CV Reported Sat, 02/15/2020 12:44 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/28/2020 11:12 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Messina	01448	961950	077 PCT
2. POM Ashley Griffith	19021	958654	077 PCT
3. POM Rochael Vasquez	10909	960049	077 PCT
4. Officers			077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Brower	09982	956460	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ashley Griffith	Abuse: Police Officer Ashley Griffith stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Ashley Griffith	Abuse: Police Officer Ashley Griffith searched § 87(2)(b)	
D.POM Ashley Griffith	Abuse: Police Officer Ashley Griffith frisked § 87(2)(b)	
E.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez frisked § 87(2)(b)	
F.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez searched § 87(2)(b)	
G.POM Ashley Griffith	Abuse: Police Officer Ashley Griffith searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I. Officers	Abuse: Officers threatened to arrest § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Ashley Griffith	Abuse: Police Officer Ashley Griffith threatened to arrest § 87(2)(b)	
K.POM Ashley Griffith	Abuse: Police Officer Ashley Griffith threatened to arrest § 87(2)(b)	
L.POM Christopher Messina	Abuse: Police Officer Christopher Messina issued a summons to § 87(2)(b)	

Case Summary

On February 15, 2020, § 87(2)(b) filed this complaint with IAB on behalf of herself, § 87(2)(b) and § 87(2)(b) generating original log 2020-04977. § 87(2)(b) was a bystander and did not know § 87(2)(b) and § 87(2)(b). The CCRB received this complaint on February 28, 2020.

On February 15, 2020, at approximately 12:22 a.m., at the intersection of Eastern Parkway and Nostrand Avenue in Brooklyn, Police Officers Ashley Griffith and Rochael Vasquez of the 77th Precinct stopped a vehicle driven by § 87(2)(b) and in which § 87(2)(b) was a passenger (**Allegations A-B: Abuse of Authority**, § 87(2)(g)). PO Griffith searched § 87(2)(b)'s coat pockets and allegedly frisked him, and PO Vasquez frisked § 87(2)(b) and allegedly searched her coat pockets (**Allegations C-F: Abuse of Authority**, § 87(2)(g)).

Police Officers Christopher Messina and Robert Brower of the 77th Precinct eventually arrived on scene. § 87(2)(b) and her friend, § 87(2)(b) arrived after the incident started and watched from § 87(2)(b) parked vehicle across the street. PO Griffith and PO Vasquez searched § 87(2)(b)'s vehicle (**Allegations G-H: Abuse of Authority**, § 87(2)(g)). Officers allegedly threatened to arrest § 87(2)(b) (**Allegation I: Abuse of Authority**, § 87(2)(g)) and PO Griffith threatened to arrest § 87(2)(b) and § 87(2)(b) (**Allegations J-K: Abuse of Authority**, § 87(2)(g)).

PO Griffith issued disorderly conduct summonses to § 87(2)(b) and § 87(2)(b) (Board Review 01). PO Messina issued a disorderly conduct summons to § 87(2)(b) (**Allegation L: Abuse of Authority**, § 87(2)(g)) as well as summonses for § 87(2)(b) (Board Review 02).

The CCRB obtained comprehensive BWC for this incident (Board Review 03-08, summarized in Board Review 09-10). All references to video refer to the timestamp in the video player and not to the on-screen timestamp.

PO Brower has since been reassigned to ESU.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Ashley Griffith stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Rochael Vasquez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that PO Griffith and PO Vasquez stopped the vehicle, and that the vehicle had tinted windows.

Both § 87(2)(b) and § 87(2)(b) provided phone statements to the CCRB, but neither had a good memory of the incident, and both opted not to provide further testimony after varying levels of questioning (Board Review 11-12). § 87(2)(b) acknowledged in his statement that his car had tinted windows, but he explained that he had a pass from the DMV which permitted the higher tint level.

PO Griffith's BWC footage shows § 87(2)(b) provide some type of paperwork relating to his tinted windows. The officers performed searches that confirmed that medical exemptions for window tints existed, but they did not ultimately determine if his paperwork was valid. They ultimately decided not to issue a summons to § 87(2)(b) for his tinted windows.

Both PO Griffith and PO Vasquez testified that vehicle's excessively tinted windows were the sole reason for the stop (Board Review 13-14). Both similarly testified that all four cabin windows and the rear windscreen were so dark that they could not see § 87(2)(b) and § 87(2)(b) from

outside the vehicle. PO Vasquez specifically mentioned that he did not know there was anyone in the front passenger seat until he approached the vehicle on the passenger side and § 87(2)(b)'s window was lowered.

New York State Vehicle and Traffic Law § 375-12b prohibits excessively tinted cabin windows (Board Review 15).

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Ashley Griffith searched § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Ashley Griffith frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Rochael Vasquez frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Rochael Vasquez searched § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Ashley Griffith searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (H) Abuse of Authority: Police Officer Rochael Vasquez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed PO Griffith searched § 87(2)(b) that PO Vasquez frisked § 87(2)(b)'s coat pocket, and that PO Griffith and PO Vasquez searched § 87(2)(b)'s vehicle.

§ 87(2)(b) said that PO Griffith told him to step out of the vehicle, placed his hands inside his coat pockets, and then patted him down on his coat, around his groin, and on his legs. § 87(2)(b) further said that he had not used marijuana earlier that day, that his car did not smell like marijuana, and that the officers never mentioned marijuana. § 87(2)(b) similarly stated that the officers never mentioned the smell of marijuana.

§ 87(2)(b) who witnessed the incident from across the street, said in a phone statement that PO Vasquez placed his hands in § 87(2)(b)'s pockets (Board Review 16). § 87(2)(b) who was with § 87(2)(b) at the time, said that she did not see an officer put his hands in § 87(2)(b)'s pockets but noted that she heard § 87(2)(b) tell an officer to get out of her pockets (Board Review 17). She further recalled telling the officers that male officers should not search female civilians.

PO Griffith's BWC at 05:55 clearly captures PO Griffith placing his hands inside § 87(2)(b)'s coat pockets and then leaning into him. The footage does not capture what happened when PO Griffith leaned into § 87(2)(b).

At 06:24, PO Griffith's BWC captures the entire conversation between PO Griffith and § 87(2)(b) regarding why the officers are going to search his car. PO Griffith asks § 87(2)(b) if they were smoking earlier. § 87(2)(b) responds, "That's earlier." PO Griffith at this point says that § 87(2)(b)'s car smells like marijuana. At 07:09, § 87(2)(b) asks if PO Griffith is going to search the car and then says that there is "no more" marijuana in the car.

PO Vasquez's BWC shows him instruct § 87(2)(b) to exit the vehicle at 09:15. After guiding her out of the vehicle, PO Vasquez stops her. It is not clear what he is doing at this point, but at 09:32, § 87(2)(b) says, "He's violating me. Get a woman cop. He's touching me." At multiple points in PO Messina's BWC, § 87(2)(b) while standing at the rear of the vehicle, says that PO Vasquez went into her pockets. At 09:50 in PO Vasquez's BWC, PO Vasquez tells PO Griffith that he did not go into her pockets.

Both PO Griffith and PO Vasquez similarly testified that they smelled marijuana upon approaching the vehicle and were able to identify the odor based on their training and experience. PO Vasquez acknowledged that he patted down § 87(2)(b) when she stepped out of the car but denied

that he ever searched her since he only felt a phone in the pocket that he frisked. PO Griffith did not remember if he searched § 87(2)(b) but acknowledged doing so when shown portions of his BWC.

§ 87(2)(g)

An odor of marijuana emanating from a vehicle during a legal vehicle stop justifies a search of the vehicle and its occupants. *People v. Chestnut*, 43 A.D.2d 260 (Third Dept. 1974) (Board Review 18).

§ 87(2)(g)

Allegation (I) Abuse of Authority: Officers threatened to arrest § 87(2)(b)

Allegation (J): Abuse of Authority: Police Officer Ashley Griffith threatened to arrest § 87(2)(b)

Allegation (K): Abuse of Authority: Police Officer Ashley Griffith threatened to arrest

§ 87(2)(b)

§ 87(2)(b) alleged that unspecified officers threatened to arrest him in response to him asking why a male officer was frisking § 87(2)(b) instead of a female officer. § 87(2)(b) declined to provide any further statements to the CCRB before he testified as to which officers made the threat or when exactly they did so. He further stated that PO Griffith told § 87(2)(b) “If you say another word, I’m going to lock you up,” in response to her complaining about being searched.

§ 87(2)(b) did not allege that any officer ever threatened to arrest her. § 87(2)(b) and § 87(2)(b) did not recount hearing officers threaten to arrest § 87(2)(b) or § 87(2)(b).

PO Brower’s BWC shows § 87(2)(b) and § 87(2)(b) commenting about PO Vasquez searching § 87(2)(b) starting at 01:29. The footage shows that officers did not threaten to arrest either § 87(2)(b) or § 87(2)(b) in response to questions or comments about being searched.

At 19:05 in PO Griffith’s BWC, PO Griffith is sitting in his car writing the summonses for § 87(2)(b) and § 87(2)(b). He suddenly gets out of the car, at which point it is evident that § 87(2)(b) and § 87(2)(b) are outside their car with officers instructing them to get back inside. Upon exiting his RMP, PO Griffith says, “I’m a lock you guys up if you don’t stop. Get back in the vehicle. Get back in the vehicle. Get back in the vehicle. That’s it. Get back in the vehicle. If you step out one more time, I’m a lock both of you up. Stay in the vehicle.”

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference, or by means of any independently unlawful act...” NY CLS Penal Law §195.05 (Board Review 19).

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Christopher Messina issued a summons to

§ 87(2)(b)

It is undisputed that § 87(2)(b) was parked across the street from the incident, and that she made remarks toward the officers from her driver's window. § 87(2)(g)

It is further undisputed that PO Messina issued a disorderly conduct summons to § 87(2)(b) regarding those remarks.

§ 87(2)(b) testified that she told the officers that they should not bully people, and that male officers should not search women. She also remarked during the incident that officers get "hurt" because they abuse their authority. § 87(2)(b) was sitting on the front passenger seat of § 87(2)(b) vehicle. He acknowledged that a small crowd gathered at the sight of the officers searching § 87(2)(b)'s vehicle and that he approached and commented to the officers that what they were doing was inappropriate, at which point the officers told him to back up and mind his business. Other bystanders also voiced similar concerns but never became confrontational.

This portion of the incident is best captured in PO Messina's BWC footage (Board Review 05 at approximately 11:25). § 87(2)(b) can be heard in the background calling the officers "ignorant" and "a fucking bunch of dumbasses." She also says, "You wonder why your partners be getting hit," and, "You have to go to a funeral because you're ignorant." The footage does not capture § 87(2)(b) using the word "shot" or "killed," and it does not capture a crowd gathering or attempting to interfere with the incident.

PO Messina's BWC footage (beginning at approximately 18:00) also captured him discussing with PO Brower the summonses he intended to issue to § 87(2)(b) while they sat inside their RMP. In addition to summonses for parking at a hydrant and not producing vehicle insurance, PO Messina first suggested that she be issued a summons for disorderly conduct. PO Brower was noncommittal and advised against it because she complied with producing her identification and was not screaming. PO Messina noted that § 87(2)(b) had been screaming earlier in the incident, and ultimately explained his decision to issue the summons by saying, "I'm writing her a C [summons]. Forget that. I'm gonna write her this one, I'm writing her that, and the C [summons]. You're not gonna yell that stuff out the window. We'll review the camera later for what exactly she said."

The handwritten summons PO Messina issued to § 87(2)(b) cited the first subsection of the disorderly conduct statute, and the section entitled "Defendant stated in my presence (*in substance*)" was left blank (Board Review 22). However, the digital summons cited the second subsection of the statute, and it noted that § 87(2)(b) said, "This is why you guys get shot" (Board Review 02). The narrative portion of the digital summons recounts that § 87(2)(b) "did with intent to cause annoyance and alarm/disrupt/act in violent and threatening matter toward officers by yelling loudly and making statements in an attempt to cause a crowd to gather [*sic*]."

PO Messina was not interviewed until approximately 15 months after the incident (Board Review 21). He did not remember much about this portion of the incident. He reviewed the digital summons and confirmed that § 87(2)(b) said something to the effect of, "This is why you guys get shot." In reference to his remark to PO Brower during the incident that he could review BWC footage to determine exactly what § 87(2)(b) said, PO Messina was unable to say if he knew what she said at the time that he wrote the summons. He could not recall if § 87(2)(b) caused a crowd to gather or if any other civilians attempted to become involved in the incident. He could not recall for how long § 87(2)(b) yelled, and he did not recall her yelling at anyone else. He did not recall her doing anything else that constituted disorderly conduct. He did not know why the handwritten summons lacked any text in the section for recording statements made by § 87(2)(b). He was unable to explain why the handwritten summons and the digital summons cited two different subsections of the disorderly conduct statute—he speculated that it was the result of a technical problem.

PO Griffith testified that § 87(2)(b) statements caused a crowd to gather, but he was

unable to quantify the number of people and noted that he did not see them get involved in any way (Board Review 20). Much like PO Messina, PO Griffith reviewed the summons shortly before his interview and recounted that she made a remark to the effect of, “This is why all cops get shot.” PO Vasquez testified that § 87(2)(b) said, “This is why you guys get killed.” He further stated that there were people gathered on the sidewalk when this happened, but he said that many people were gathered during the initial vehicle stop and was unable to tell if it was the same people still gathered when PO Messina and PO Brower stopped § 87(2)(b).

“A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: (1) She engages in fighting or in violent, tumultuous or threatening behavior; or (2) She makes unreasonable noise.” NY Penal Law §240.20 (1) & (2) (Board Review 30).

“Critical to a charge of disorderly conduct is a finding that defendant’s disruptive statements and behavior were of a public rather than individual dimension.” “The risk of public disorder does not have to be realized but the circumstances must be such that the defendant’s intent to create such a threat (or reckless disregard thereof) can be readily inferred.” In determining whether such an intent can be inferred, courts use “a contextual analysis that turns on the consideration of many factors, including ‘the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances.’” *People v. Baker*, 20 N.Y.3d 354 (2013) (Board Review 23).

In *Baker*, the Court of Appeals found that “isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the ‘public harm’ mens rea necessary to support a disorderly conduct charge.”

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to four of CCRB complaints and has been named as a victim in 13 allegations (Board Review 24):
 - § 87(2)(b)
 -
 -
 -
- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been parties (Board Review 25).
- PO Christopher Messina has been a member of service for four years and has been a subject in six CCRB complaints and 13 allegations, of which three were substantiated:

Reviewer:

Signature

Print Title & Name

Date